

Amend the Soldiers and Sailors Civil Relief Act to protect the educational status and tuition payments and limit the interest rate on student loans of service members called to active duty.

Authorize a new 401(k) type plan where members of Reserve Components can invest pre-tax dollars that can be withdrawn to supplement military income when member is mobilized or completes his or her military career.

#### THE PROTECT ACT, S. 151

Mr. BAUCUS. Madam President, although I voted in favor of the conference report on S. 151, I must register my profound concern with certain provisions that were added to the conference report that have nothing to do with protecting children.

I am referring to title IV of the conference report that mandates sweeping changes to the Nation's sentencing laws and guidelines. These provisions stem from an amendment added to the bill in the House, and later modified under unusual circumstances in the conference committee.

These provisions will drastically impact the discretion and independence of Federal judges and the judiciary to impose just sentences not just for child and sex abuse crimes, but for all crimes. These provisions will alter the sentencing laws of the United States, with little or no public debate or hearing on the issue, and with little or no research or study on whether too many Federal judges are in fact abusing their discretion or improperly granting departures from mandatory minimum sentences.

As my colleague from Massachusetts pointed out, if the majority on the conference committee had limited these changes to the serious crimes of sex abuse of children and child pornography, there would be little or no objection to these provisions. But they didn't. They allowed the *de novo* appellate review and other provisions to stand, provisions which will restrict the ability and discretion of Federal judges to grant downward departures for all offenses.

Unfortunately, as the majority is well aware, the child abduction notification provisions and virtual child pornography provisions of S. 151 are too important to delay any longer than necessary. I cannot vote against those provisions—we must do everything we can to strengthen the hand of State, Federal, and local law enforcement, as well as prosecutors, to protect our children from sexual predators.

It is just unfortunate that this must-pass legislation was taken advantage of to move sweeping reforms of the larger U.S. criminal justice system, reforms the Senate did not debate and on which no hearings were held. I hope we will be able to revisit this matter in the near future.

Mr. BINGAMAN. Mr. President, yesterday I joined my colleagues in voting for S. 151, the PROTECT Act, legislation that is intended to help reduce the

incidence of child abduction in our country. The bill passed unanimously on a vote of 98 to 0. I voted for this bill because I believe it contains many important and needed provisions, but I did so with reservations about a couple of different sections of the bill that, in my view, deserved further deliberation.

Before I discuss these reservations, let me start by discussing the most important provisions in this bill. First, this legislation establishes a national AMBER alert system, which includes the establishment of an AMBER alert coordinator within the Department of Justice to assist states with their AMBER alert plans, and which will help to eliminate gaps in the network through better regional coordination among plans. I was pleased to be a co-sponsor of the stand-alone version of this bill in both the 107th and 108th Congresses. My home State of New Mexico already has an Amber alert plan, which was recently codified by our State legislature, and I am hopeful that this new Federal legislation will allow my State to receive funding under the new grant programs created by this bill.

Second, the bill includes the so-called "Code Adam Act," which would require Federal buildings to establish procedures to locate a child that is missing in the building. The original Code Adam—one of the country's largest child safety programs—was created by Wal-Mart in 1994 and is now used in more than 36,000 stores nationwide. It is also supported by the National Center for Missing and Exploited Children.

Third, in spite of the many extraneous provisions added by the House, the bill includes much of the original PROTECT Act, which passed the Senate unanimously last year. These provisions provide needed tools to prosecutors to help them deal with the problem of child pornography in a way that should pass constitutional muster. Congress first addressed this issue in the 1996 Child Pornography Protection Act, but a significant portion of that law was struck down by the Supreme Court last year. I am pleased with the work of the Senate Judiciary Committee in working through the issues raised by the Supreme Court in a thoughtful and bipartisan way, and I am hopeful that this new measure will help ensure that child pornographers are held accountable for their actions.

I would like to say a few words now about my reservations in voting for this bill. Title IV of the bill makes significant new changes to Federal sentencing procedures in the name of reform. While many of these changes may turn out to be beneficial, at no point in the legislative history of this bill was there an opportunity for critical questions to be raised and answered about these new sentencing reforms. Title IV was added in conference as an amendment with little opportunity for the minority to even read the amendment or engage in a thoughtful debate. Further, several of my col-

leagues on the Judiciary Committee have noted their objections to what they view as a misrepresentation of the amendment in conference. I do not believe this is the way in which we should do business, and I am disappointed that there was not an opportunity for my colleagues to debate their legitimate concerns further.

In particular, Senator LEAHY raised concerns that this amendment could potentially undermine the Federal sentencing system and prevent judges from imposing just and responsible sentences. As justification, Senator LEAHY cites remarks by Chief Justice Rehnquist on the nearly identical Feeney amendment, which was added to the bill on the House floor. In those remarks, the Chief Justice said, "This legislation, if enacted, would do serious harm to the basic structure of the sentencing guideline system and would seriously impair the ability of courts to impose just and responsible sentences."

Whether one agrees with the sentencing reform provisions in this bill or not, the very fact that the Chief Justice of the United States Supreme Court has voiced concerns about it leads me to believe that more time was needed for both the Senate and the House to consider the scope and potential impact of this legislation.

Finally, I would like to comment on another piece of the PROTECT Act, which was added as an amendment in conference by Senator BIDEN. The Illicit Drug Anti-Proliferation Act, previously known as the RAVE Act, modifies the current so-called "crack house" statute to make clear that anyone who knowingly or intentionally uses his or her property, or allows another person to use his or her property, for the purpose of distributing, manufacturing, or using illegal drugs will be held accountable. The provision also allows for civil suits against violators.

I have received many calls and letters from people in my State who have raised legitimate concerns about this legislation. While I fully support efforts to ensure that our youth do not fall victim to drugs, and while I understand that Senator BIDEN modified his bill slightly from the previous Congress to address concerns that were raised, I would have preferred that this legislation be allowed to go through the normal legislative process. This would have allowed a public airing of the many concerns that I have heard, and would have provided an opportunity for the Senate Judiciary Committee to address those concerns, as necessary.

I hope very much that during the remainder of this Congress we can revisit both these new provisions related to sentencing and the RAVE Act.

#### NOMINATION OF ROSS SWIMMER

Mr. DORGAN. Madam President, I necessarily missed last evening's vote on the nomination of Ross Swimmer to be the Special Trustee for American Indians because of a family obligation.

However, had I been present, I would have opposed this nominee, as I did when his nomination was considered by the Committee on Indian Affairs, on which I serve. I would like to take a few moments to explain why I do not support this nomination.

Ordinarily, I believe the President has the right to choose who will serve in his administration. The position of Special Trustee for American Indians is unique, however. Congress created the position of Special Trustee in 1994 in large part because of the historical failure of the Department of the Interior to live up to the Federal Government's trust responsibility to Native Americans. The Special Trustee was and is intended to be an advocate on behalf of tribes and individual Native Americans to ensure that those trust duties are met. In my view, Native Americans deserve someone in this position in whom they can have confidence. Regrettably, Mr. Swimmer is not that person.

Many tribal leaders from my State have shared with me their very deep concern that Mr. Swimmer would not be an independent voice and advocate on behalf of Native Americans within the Department of the Interior. In fact, under previous administrations and in recent months, he has been an integral part of the Department of the Interior team that has sought to implement trust management reforms without the full support of and consultation with the Native Americans whose assets they manage. To many of my Native American constituents, this is akin to allowing the fox to guard the henhouse.

Nevertheless, Mr. Swimmer has now been confirmed by a majority of the Senate to serve as Special Trustee for American Indians, and I wish him success in that position. He has made a commitment to me and others to consult with tribes in a timely and meaningful way, and I will certainly be working with Mr. Swimmer to ensure that is the case.

#### WAR CRIMINALS

Mr. KYL. Madam President, I rise in support of the goal of this nonbinding resolution, which is to promote bringing Saddam Hussein and his war criminals to justice.

In reading the language of the resolution, I note that it does not preclude the United States itself from detaining or from prosecuting Iraq war offenders of any nationality before a United States military tribunal or some other American-arranged forum.

It also does not preclude a new Iraqi government from prosecuting these criminals in an Iraqi tribunal if it is deemed that this is feasible and likely to result in substantial justice. The resolution also does not in any way mandate constitution of an international tribunal, something which the United States should oppose, as it would preclude the death penalty.

With this understanding, I support the resolution.

#### TRIBUTE TO MAJOR GENERAL A. BOWEN BALLARD

Mr. SESSIONS. Madam President, I take this opportunity to recognize the retirement of a friend and outstanding Air Force Officer, Major General A. Bowen Ballard. Major General Ballard's superior and exceptionally distinguished Air Force career warrants comment as the Air Force says thank you and goodbye to one of its best.

Major General Ballard has served this Nation and the United States Air Force for more than 37 years. His service has been marked by increasingly demanding command and staff positions, culminating as the Mobilization Assistant to the Commander, Air University, Maxwell AFB, AL.

Throughout his military service, Major General Ballard has served with distinction and honor. It is my privilege to recognize his many significant contributions and to commend him for his outstanding service. A son of Alabama, Major General Ballard grew up in Montgomery and attended elementary and junior high school in Cloverdale. After graduating from Lanier High School, he enlisted in the Alabama Air National Guard as an intelligence specialist, while at the same time he attended the University of Alabama earning a degree in business and finance.

In 1966, he was commissioned and resumed his service in Air Force Intelligence. Major General Ballard attended the Air Intelligence School at Lowry Air Force Base, CO, and from 1967 until 1974, he filled various intelligence positions with the 187th Tactical Reconnaissance Group, Alabama Air National Guard.

Leaving the Alabama Air National Guard and joining the Air Force Reserve in 1974, Major General Ballard was assigned to the Air Force Intelligence Service at Fort Belvoir, VA, where he played a key role in transitioning Air Force Special Operation Forces from the Tactical Air Command to the Military Airlift Command and participated with Air Force Special Operation Forces on an international basis. Major General Ballard was involved with the North Atlantic Treaty Organization and the United States European Command for many years.

During his assignment as the Mobilization Assistant to the Chief of Staff, Intelligence, Headquarters United States Air Force, Major General Ballard was recalled to active duty in a key position of leadership to manage the planning, directing, and establishing of policies and procedures for all USAF intelligence activities.

As the Mobilization Assistant to the Director of the National Security Agency/Chief, Central Security Services, Fort George G. Meade, MD, Major General Ballard's guidance and direction was critical in identifying and resolving critical issues affecting the Air Force during one of the most turbulent and demanding times in our history.

Major General Ballard frequently met with the senior military leadership, to include the Secretary of Defense, Secretary of the Air Force, the Chief of Staff of the Air Force, and members of the Senate and Congress, effectively presenting crucial positions involving specific operational intelligence and professional military education issues. He achieved unparalleled success in charting the strategic direction and employment concepts as the Chairman of the Assistant Secretary of Defense's Command, Control, Communication and Intelligence Steering Council. Major General Ballard represented commanders of the Air University and Air Force Space Command on numerous panels, boards, and work groups, including personally leading the development of creative and innovative improvements to the Joint Reserve Intelligence Program. Major General Ballard was directly responsible for identifying, developing and implementing a significantly new direction for Reserve Intelligence roles and missions in space operations. Under his untiring leadership, the Air Force Space Command Reserve Intelligence Program transformed into a vital partner in on-orbit space collection intelligence assessments.

As the Mobilization Assistant to the Commander, Air University, he assisted the commander with significant improvements to Air University schools in curricula and coursework, joint programs, faculty management, computer technology, and communications systems. As a result of his efforts, all graduates of Air Command and Staff College and Air War College now receive masters degrees in military science. Major General Ballard's leadership skills were constantly in high demand. For the Joint Chiefs, he developed the Joint Chiefs of Staff/Department of Defense Strategic Plan, providing unprecedented joint contingency support to operations in both Operation Noble Anvil and Operation Allied Force. For the combatant commanders, he applied his focus on language and distributed joint reserve component intelligence operations and implemented a flexible solution which paid significant dividends in the military theater of operations and in the global war on terrorism. Major General Ballard also established the foundation for joint cryptology reserve component support to the European and Pacific Command. The formulation and justification of cryptologic reserve support elements blossomed into greatly improved reserve component support in intelligence operations ensuring a significant reserve augmentation force well into the 21st century. Major General Ballard has demonstrated time and time again superior performance, planning, coordinating, directing, and managing of Air Force operational intelligence programs, and Air Force Reserve intelligence mission augmentation activities. Major General Ballard's